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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/832,709

04/11/2001

Karla E. Williams

460.2050USU

1658

7590

09/19/2007

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

09/19/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/832,709

Applicant(s)

WILLIAMS ET AL.

Examiner

Jacqueline F. Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-7,10-15,20-24 and 26-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-7,10-15,20-24 and 26-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant argues Petrus does not fall within any of the claimed malodour counteractants listed in claim 11. However, pectin meets the criteria of a soluble natural compound as well as a natural plant or herb extract as broadly as claimed.

Applicant argues that the present application provides data showing that odor-absorbing efficacy for glycerin is not a simple linear relationship. simple linear relationship.

Applicant references see Figure 2 and page 18, line 3 to page 19, line 2 of the specification for support of the claimed ranges. However, the referenced passage provides support for as little as 0.01 grams, but does not provide support for criticality of + tampon; particularly since in Figure 2, the upper limit is 0.12 grams. While Petrus does not disclose a specific amount of the additive, it does disclose the additive is present. The examiner maintains that one having ordinary skill in the art would be able to determine through routine experimentation the amount of additive necessary for achieving optimal odor removal.

Applicant admits that Petrus discloses lubricants, such as glycerin and a deodorant, namely pectin. However, applicant argues the disclosure of Petrus is in contrast to the present invention of a tampon containing one or more malodor counteractants, where one of the claimed malodor counteracts is glycerin. Applicant argues the overlap of

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glycerin is an incidental similarity that would not have taught or suggested the features of the present claims. The examiner has recognized another advantage from the use of glycerin, which would flow naturally from following the suggestion of the prior art.

Applicant further argues Petrus teaches away from the use of lubricant as a malodor counteractant, emphasizing the placement of lubricant only on the outer region. The examiner submits this does not suffice as a teaching against glycerin as a malodor counteract. Even on the exterior, glycerin would still be able to counteract odors.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 3, 5-7, 10-15, 21-24, and 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petrus et al. USPN 5417224.

As to claims 1, 3, 5-7, 10, 12, 13, 15, 21-24, and 27-30, Petrus discloses a tampon having glycerin and pectin as a malodor counteractant material (col. 6, lines 37-52). Petrus discloses a foam tampon as opposed to the claimed fibrous tampon. It would have been an obvious matter of design choice to use a fibrous tampon instead of a foam tampon, since applicant has not disclosed that using a fibrous tampon solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a foam tampon.

Petrus discloses the glycerin as a lubricant, however it is additionally capable of absorbing odors as taught in Yabrov (col. 4, lines 41-43). Additionally it is old and well known that glycerin and pectin are natural substances. Petrus is silent on the amount of counteractant material present in the absorbent. However, Petrus discloses a malodor counteractant in a tampon (col. 6, lines 37-52). One having ordinary skill in the art would be able to determine through routine experimentation the amount of counteractant material necessary for a particular end product. Moreover, discovering optimum values only involves routine skill in the art, *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

As to claim 11, Petrus discloses a tampon having glycerin and pectin as a malodor counteractant material (col. 6, lines 37-52).

As to claim 14, Petrus does not specifically disclose the fragrance is in liquid form. It would have been an obvious matter of design choice to use the fragrance in a liquid application, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

As to claim 20, Petrus discloses a tampon having glycerin and pectin as a malodor counteractant material (col. 6, lines 37-52) and a fibrous material for absorbing body fluids (col. 4, lines 40-50 and col. 5, lines 29-35).

As to claim 24, Petrus further discloses a method of applying a tampon having glycerin and pectin as a malodor counteractant material (col. 6, lines 37-52; col. 7, lines 25-54).


As to claim 26, Petrus discloses a method of applying a tampon having glycerin and pectin as a malodor counteractant material (col. 6, lines 37-52; col. 7, lines 25-54).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F Stephens  
Primary Examiner  
Art Unit 3761

August 6, 2007